
UNFINISHED BUSINESS

Bill No: SB 239
Author: Arreguín (D)
Amended: 7/2/26
Vote: 21

SENATE LOCAL GOVERNMENT COMMITTEE: Not relevant

SENATE JUDICIARY COMMITTEE: Not relevant

SENATE FLOOR: Not relevant

SUBJECT: Crimes: criminal threats

SOURCE: Author

DIGEST: This bill authorizes the court to consider, as a factor in aggravation in sentencing a person for making criminal threats, that the defendant willfully threatened to commit a crime that would result in the death or great bodily injury of an elections official of a city, county, city and county, or public district, or an elected local agency official.

Assembly Amendments delete the prior version of the bill and amend the bill to the current version.

ANALYSIS:

Existing law:

- 1) States that any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate

prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for their own safety or for their immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. (Pen. Code, § 422, subd. (a).)

- 2) Provides that in sentencing a person convicted of making felony criminal threats, the court may consider, as a factor in aggravation, that the defendant willfully threatened to commit a crime that would result in death or great bodily injury of a person the defendant knew was a state constitutional officer, a Member of the Legislature, or a judge or court commissioner. (Pen. Code, § 422, subd. (b).)
- 3) Makes a felony violation of Penal Code section 422 a "serious felony," and therefore a "strike" for purposes of Three Strikes sentencing. (Pen. Code, § 1192.7, subd. (c).)
- 4) States that any person who, with intent to annoy, telephones another, or contacts him or her by means of an electronic device, and threatens to inflict injury on the person or the person's family, or to the person's property, is guilty of a misdemeanor. (Pen. Code, § 653m, subd. (a).)
- 5) Provides that every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable as an alternate felony-misdemeanor. (Pen. Code, § 69, subd. (a).)
- 6) States that every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff, immediate family, or immediate family of the staff of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense. (Pen. Code, § 76, subd. (a).)
- 7) States that no person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child, on the internet knowing that person is an elected or appointed official

and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. Punishes the crime as a misdemeanor, or a felony, depending on the circumstances. (Pen. Code, § 76.5.)

- 8) States that any person who commits assault upon specified public officials or attempts to commit murder against any of those specified officials in retaliation for or to prevent the performance of the victim's official duties, shall be punished by a felony, as specified. (Pen. Code, § 217.1.)
- 9) Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall in its sound discretion order imposition of a sentence not to exceed the middle term, except as specified. (Pen. Code, § 1170, subd. (b)(1).)
- 10) Provides that the court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170, subd. (b)(2).)
- 11) States that notwithstanding the presumption for the middle term, and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances and that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if the defendant experienced psychological, physical, or childhood trauma, is a youth (under age 26), or is or has been a victim of domestic violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)
- 12) Defines "local agency official" to mean any member of a local agency legislative body and any elected local agency official. (Gov. Code, § 53237, subd. (b).)
- 13) Prohibits any state or local agency from publicly posting the home address, telephone number, or the name and assessor parcel number associated with the home address of any elected or appointed official on the internet without first obtaining the written permission of that individual. (Gov. Code, § 7928.205, subd. (a).)

This bill authorizes a court to, in sentencing a person convicted of a felony criminal threat, consider as an aggravating factor that the threat was made against an elections official of a city, county, city and county, or public district, or an elected local agency official.

Background

Existing law punishes criminal threats. (Pen. Code, § 422.) A law that restricts speech has First Amendment implications. The First Amendment to the United States Constitution states: “Congress shall make no law . . . abridging the freedom of speech. . . .” This fundamental right is applicable to the states through the due process clause of the Fourteenth Amendment. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 133-134, citing *Gitlow v. People of New York* (1925) 268 U.S. 652, 666.) The California Constitution provides that: “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” (Cal. Const., art. I, § 2, subd. (a).)

While these guarantees are stated in broad terms, “the right to free speech is not absolute.” (*Aguilar v. Avis Rent A Car System, Inc.*, *supra*, 21 Cal.4th at p. 134, citing *Near v. Minnesota* (1931) 283 U.S. 697, 708). As the U.S. Supreme Court has acknowledged: “Many crimes can consist solely of spoken words, such as soliciting a bribe, perjury, or making a terrorist threat.” (*Ibid.*; *See* Pen. Code, §§ 653f; 118; 422).

Content-based restrictions on speech are presumptively invalid (*R.A.V. v. St. Paul* (1992) 505 U.S. 382), however, courts have upheld restrictions on content-based speech when the speech is “ ‘of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.’ Thus, for example, a State may punish those words ‘which by their very utterance inflict injury or tend to incite an immediate breach of the peace.’ ” (*In re J.M.* (2019) 36 Cal.App.5th 668, 674, citing *Virginia v. Black* (2003) 538 U.S. 343, 358-359.)

True threats are not protected by the First Amendment. (*In re M.S.* (1995) 10 Cal.4th 698, 709.) Existing Penal Code section 422 has been found to be constitutional because it is narrowly tailored to apply only to true threats, which are defined as threats “to commit a crime which will result in death or great bodily injury to another person . . . which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to

convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat.” (*People v. Toledo* (2001) 26 Cal.4th 221, 233.)

To convict a person under Penal Code section 422, the prosecutor must prove the following:

- That the defendant willfully threatened to commit a crime which will result in death or great bodily injury to another person;
- That the defendant made the threat;
- That the defendant intended that the statement be taken as a threat, even if there is no intent of actually carrying it out;
- That the threat was so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat;
- That the threat actually caused the person threatened to be in sustained fear for his or her own safety or for his or her immediate family’s safety; and
- That the threatened person’s fear was reasonable under the circumstances. (Pen. Code, § 422; CALCRIM No. 1300; see also *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

Penal Code section 422 applies to all criminal threats that will result in death or great bodily injury regardless of the person threatened, the location, or the exact type of violence that is threatened. A violation of Section 422 is punishable as either a misdemeanor or a felony. (Pen. Code, § 422.) When a criminal threats conviction is punished as a felony, it is also a serious felony for purposes of enhanced punishment under the Three Strikes Law (Pen. Code, § 1192.7, subd. (c)(38)) and the five-year prison enhancement for prior serious felony convictions (Pen. Code, § 667). Additionally, it triggers credit earning limitations. (Pen. Code, § 1170.12.)

California’s sentencing scheme is, for the most part, determinate—it is referred to as the determinate sentencing law (DSL). (Pen. Code, § 1170, subd. (b)(1).) Any person convicted of a felony is sentenced to one of three sentence terms (known as a sentencing triad). For example, a person convicted of a first-degree burglary may be sentenced to two, four, or six years in the state prison. The court must consider factors in aggravation, and those factors must be proven to the trier of fact beyond a reasonable doubt before imposing the upper term. (Pen. Code, § 1170, subd. (b)(2) & (6).)

Existing law, enacted last year through AB 352 (Pacheco), Chapter 554, Statutes of 2025, added criminal threats against a state constitutional officer, a Member of the Legislature, or a judge or commissioner as a factor in aggravation that may authorize imposition of the upper term if the jury finds it true beyond a reasonable doubt. The California Rules of Court enumerate circumstances in aggravation and mitigation, relating both to the crime and to the defendant. (Cal. Rules of Court, rules 4.421, 4.423.) In addition, any other factors statutorily declared to be circumstances in aggravation or mitigation that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered in aggravation.

This bill expands existing law to add criminal threats against a city, county, city and county, or public district, or a local agency official. In order to consider this a factor in aggravation, it will have to be either admitted by the defendant, or found to be true beyond a reasonable doubt by the jury, or by the judge in the case of a bench trial.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee:

Potential increase in state incarceration costs (General Fund) of an unknown, but potentially significant amount, to the extent the new aggravating factor results in imposition of the upper term rather than the middle term in felony criminal threats cases involving the specified officials. Potential court cost pressures (Trial Court Trust Fund) of an unknown, but likely minor amount, to the extent pleading and proving the new aggravating factor to the trier of fact marginally lengthens some trials and sentencing proceedings.

SUPPORT: (Verified 8/24/26)

California Association of Joint Powers Authorities
California Contract Cities Association
California Municipal Clerks Association
California Special Districts Association
Valley Industry and Commerce Association

OPPOSITION: (Verified 8/24/26)

None received

ARGUMENT IN SUPPORT:

The California Municipal Clerks Association writes:

In recent years, the public servants who administer our elections and deliver essential local services have faced a troubling rise in threats and intimidation. These individuals carry out duties that are fundamental to democratic governance and to the daily functioning of our communities, yet they are increasingly targeted for harassment intended to coerce, silence, or endanger them.

SB 239 recognizes the seriousness of this conduct and affirms that those who serve the public deserve protection from violence and the threat of violence. By allowing courts to weigh such threats as a factor in aggravation, this bill provides a measured and appropriate sentencing tool that reflects the gravity of intimidating public officials in the performance of their duties. The bill preserves judicial discretion while signaling clearly that threats against local elections officials and local agency officials will not be treated as ordinary offenses. We believe this approach will help deter future misconduct, support the recruitment and retention of dedicated public servants, and safeguard the integrity of the local functions on which our residents rely.

Prepared by: Marshal Lawler / PUB. S. /

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